

CONTRACT #1
RFS # N/A

Tennessee Board of Regents
University of Memphis

VENDOR:
Paciolan, Inc.



Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833
(615) 366-4400 FAX (615) 366-4464 www.tbr.edu

March 23, 2007

RECEIVED

MAR 26 2007

FISCAL REVIEW

Ms. Leni S. Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Ms. Chick:

Enclosed please find Amendment 2 between the University of Memphis and Paciolan, Inc. for hardware, software, and maintenance services related to the existing athletic department ticketing system. Please note that the proposed term of this Amendment is five (5) years from the date of execution. I have also included copies of the original Agreement and Amendment 1.

Per Fiscal Review's request to see non-competitive agreements/amendments, and the amount and term involved with this amendment, we are submitting this for approval to the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory
Director of Purchasing and Contracts

cc: Charles Manning
Bob Adams
William Mueller, UOM
David Zettergren, UOM

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College
Jackson State Community College • Morlow State Community College • Pellissippi State Technical Community College
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College
The Tennessee Technology Centers

Memo

To: Billy Mueller, Attorney
From: Wesley Wheeler, Local Technical Support Provider II-Athletics
CC: Bill Lofton, Associate Athletic Director
Date: 3/2/2007
Re: Paciolan Systems

Paciolan Systems has been our ticketing system provider since 1983. Our goal is to become current with their newest upgrade as we are several versions below what the installed customer base is now. They will be phasing out our version soon, not to mention that the current system has had many errors and remains to be unstable. Paciolan will inevitably stop supporting our current version (TK, non-GUI) and put more effort into development of the current modules. We have approximately 45000+ customer accounts in the system and use it for all athletic and Scholarship Fund activities and drives as well as web sales, renewals, and printing tickets.

With the new version, we have also opted to go with a hosted server. We will use a server under their control that is monitored, upgraded and patched to all the latest levels by PSI technicians. In addition, upgrades, patches and fixes are installed on a timely basis and included with maintenance and support- which will now be a 24-7 scenario. They also participate in industry standards for credit card processing and security – passing rigorous assessments set by the VISA Cardholder Information Security Program. We will make use of faster credit card charge times and the newly windowized (GUI) software package that PSI is supporting and developing that runs on the MS-Windows platform (currently using a terminal emulator).

For over 25 years, many of the nation's top universities have worked with Paciolan to manage their ticketing, fan and donor relationships. Collectively, these universities form the industry's largest community offering all universities - large and small – a wealth of knowledge and experience to share amongst each other. Paciolan fosters this spirit of community in many formats; PACnet, Paciolan's annual conference, regularly scheduled best practice webinars, online training courses, and online community forums. When coupled with industry leading functionality Paciolan provides college athletics organizations with the most complete solution that continues to breed success amongst the community. Paciolan clients sell over 100 million tickets annually representing approximately 25% of all live event tickets sold in the US. Paciolan is a privately held corporation based in Irvine, California. Representative customers include: Thomas & Mack Center, Louisiana State University, University of Oklahoma, University of Nebraska, The Resch Center, University of Michigan, Florida State University, Ole Miss, Southern Mississippi, University of Maryland, University of Southern California, University of North Carolina at Chapel Hill, the Colorado Rockies, San Diego Padres, Philadelphia Phillies, Denver Center for the Performing Arts, The Charlotte Arena, Toronto Symphony Orchestra, American Museum of Natural History, Boston Museum of Fine Arts, National Aquarium in Baltimore, Dover Downs Entertainment, Inc. and many other leading venues across North America.

We are most pleased with the systems we've had to date and look forward to forging ahead with the new system less (hosted) version of ticketing and Support Group. PSI has always been a leader in the area of college athletics ticketing and is known for its flexibility and willingness to work with the customer for any needs that the customer may require of its system software.



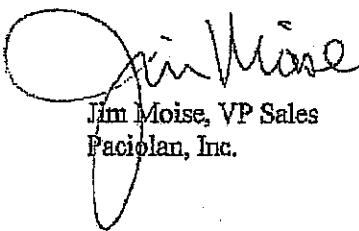
January 26, 2007

Paciolan, Inc. is the manufacturer and sole supplier of its products.

University of Memphis provides ticketing and donor services for Athletic events through the use of the Paciolan system. An enhancement to the capabilities of the system is necessary to provide the maximum customer service to our alumni and donors. Memphis has used ticketing and donor systems manufactured and supported by Paciolan for over 23 years to meet its needs, both as a turnkey solution for ticketing and to manage donor records. Memphis needs to improve online ticketing services while maintaining the existing Paciolan ticketing infrastructure to ensure continuity of its donor operations.

The Paciolan infrastructure currently utilized by Memphis includes a rating program – an integrated program that calculates a numerical ranking for each patron based on support of Memphis Athletics through charitable gifts, ticket purchases, longevity, referrals, volunteerism, and returned tickets. This is a custom program designed by Memphis Athletics and created by Paciolan uniquely for our requirements and formula. The design, testing, implementation, further testing and final approval of this program required extensive manual updates to include historical records. Paciolan is the sole provider of this program, which includes historical information and is totally integrated with the existing fundraising software.

Paciolan is the only vendor that can provide the above integration to the University of Memphis donor records.



Jim Moise, VP Sales
Paciolan, Inc.

**AMENDMENT No. 2
TO THE
SYSTEM PURCHASE CONTRACT
BETWEEN PACIOLAN, INC.
AND
UNIVERSITY OF MEMPHIS**

This Amendment No. 2 ("Amendment") to the System Purchase Contract executed on May 25, 1999, as amended ("Original Agreement") is entered into effective as of _____, 2007 ("Amendment No. 2 Effective Date") by and between PACIOLAN, INC., a Delaware corporation ("Paciolan"), and the UNIVERSITY OF MEMPHIS ("Customer").

Background

WHEREAS, Paciolan and Customer previously amended the Original Agreement under that certain Amendment No. 1 effective June 30, 2003 ("Amendment No. 1"); and

WHEREAS, Paciolan and Customer now wish to amend and supplement the Original Agreement to provide new hardware, software, professional services, and hosting services, as well as specify the applicable costs.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree to further modify the Original Agreement as set forth in this Amendment.

Original Agreement Amendments

1. **Hosting Services.** Paciolan shall provide to Customer hosting services as set forth on **Exhibit A.**

2. **Supplemental Investment Analysis.** The Supplemental Investment Analysis attached hereto as **Exhibit B** supplements the Investment Analysis to the Original Agreement, as amended by Amendment No. 1. The Supplemental Investment Analysis contains the listing of new hardware, software, and professional services being provided to Customer under this Amendment. Notwithstanding anything to the contrary in the Original Agreement, all Software shall be provided in object code only.

3. **Fee and Payment Terms.** The fees for Paciolan to provide the new hardware, software, professional services, and hosting services are attached hereto as **Exhibit C.** The maximum liability to the Customer under this Amendment shall not exceed \$510,000.00.

4. **Term.** The Original Agreement is hereby amended to include the following language which is provided in lieu of, and supersedes, any conflicting language in the Original Agreement:

"The term shall begin on the effective date hereof and shall continue through the five (5) year anniversary of the Amendment No. 2 Effective Date."

5. **Defense Against Claims.** The following language shall be added to this Section: "No cost or expenses shall be incurred for the account of CUSTOMER without its written consent. The Attorney General for the State of Tennessee reserves the right to participate in the defense of any such action. CUSTOMER shall not be liable for any award or judgment against CUSTOMER or the State of Tennessee reached by compromise or settlement unless CUSTOMER accepts the compromise or accepts

the settlement. CUSTOMER shall have the right to enter into negotiations for the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon CUSTOMER and the State of Tennessee unless approved by the Attorney General".

6. **Limitation of Liability.** The second sentence of this Section shall be amended to read: "To the maximum extent allowed by applicable law: Paciolan is not liable for any indirect, special, or consequential damages arising out of the use of any of the components or services covered by this contract".

7. **Settlement of Disputes.** This Section is deleted in its entirety.

8. All exhibits attached hereto are incorporated herein by reference. Except as amended by this Amendment, all other terms and conditions set forth in the Original Agreement, as amended by Amendment No. 1, including the defined terms, shall remain in full force and effect. If there is any conflict between the terms and conditions of this Amendment and the Original Agreement, as amended by Amendment No. 1, then the terms and conditions of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and do each here by represent that their respective signatory whose signature appears below has been and is on the Amendment Effective Date duly authorized by all necessary and appropriate corporate action to execute this Amendment.

PACIOLAN, INC.

Signature: _____
Name: _____
Title: _____
Date: _____

UNIVERSITY OF MEMPHIS

Signature: _____
Name: _____
Title: _____
Date: _____

TENNESSEE BOARD OF REGENTS

Approved:

Signature: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Hosting Services

Data Center and Services

- Paciolan shall, at its sole expense maintain a central computer facility ("Data Center") at such location as it shall deem necessary for the operation of the ticketing system.
- Paciolan's Data Center is designed to have 7x24 availability with the exception of planned downtime for system upgrades and/or periodic maintenance that will be needed to ensure effective performance of the system and applications. These activities will require the hosting service not be available to the client or external users for the duration of the maintenance or upgrade activity.
- Standard periodic maintenance will generally be performed during a standard maintenance window between 12:00AM and 4:00AM, Customer local time.
- Paciolan will provide Customer 72 hours advance notice for maintenance activities that will be performed outside the standard maintenance window and which will affect system availability. Paciolan will make all reasonable efforts to accommodate Customer's system availability needs outside of the standard maintenance window.
- Paciolan will make all reasonable efforts not to disrupt Customer business operations during system upgrades and will work with Customer to determine a mutually agreeable timeframe for such upgrades.
- Paciolan is responsible for system administrative activities including the following:
 - AIX and Universe administration
 - Software maintenance
 - Hardware maintenance and upgrades as needed
 - Daily backups of critical data
 - Active monitoring of system availability and responsiveness
 - System health checks and troubleshooting of system and network issues
 - Database recovery necessitated due to hardware or software issues
- Capacity planning and system load monitoring
- Scalability for large events

Security

- Remote system access is controlled via redundant firewalls.
- Controlled physical access to the Data Center with access limited to selected members of the Paciolan technical services team.
- Managed system administration level access is limited to key, qualified Paciolan team members.
- Daily data backups will be stored in a secure location separate from the Data Center.

Other Included Products and Services

- Server hardware located in Paciolan's Data Center sized to support Customer's ticketing operations.
- Secure data communications via a Paciolan-managed VPN between the customer's Local Area Network and Paciolan's Data Center. Client is responsible for maintaining local Internet connections meeting minimum bandwidth requirements.
- Software upgrades for licensed copies of t.Res, t.Fund and t.Credit, will be provided as made generally available to hosted customers, but not more than once per year during the term of the Original Agreement as amended.
- Any third-party software listed on the Supplemental Investment Analysis attached to this Amendment for no additional charge.
- Services associated with configuration and testing for frame relay credit authorization to Customer's current payment processor.
- Software maintenance support package.

For the purpose of clarity, the following additional products, services, costs and fees are not included in the costs set out on Exhibit C:

- Custom programming
- Additional training or consulting services requested during the term of the Original Agreement.

Exhibit B

Supplemental Investment Analysis

HARDWARE, SOFTWARE AND PROFESSIONAL SERVICES	
Qty	Description
	HARDWARE
1	Lantronix ESP2-100 Print Server
2	PSI-25S Cable
2	Lantronix Lightwave Network Adapter (PN 200.2066A)
2	Cisco 871-K9 Router - if required
32	Personal Computer Supplied by Customer
	Minimum PC Requirements: Windows XP or 2000 Professional, 1.5GHz Pentium CPU CPU (Pentium 4 - 2.8GHz recommended for Enterprise Ticketing Terminal or WBST), 512MB RAM (1GB for Enterprise Ticketing Terminal or WBST), 2GB Free Disk Space, Network Interface Card, XGA or better video card and monitor, 2 USB ports, parallel and serial port
	SOFTWARE
	Applications Software
1	t.Res Software License
1	Paciolan Client Software for use with Seat Map
1	t.Credit Software License
1	t.Fund Software License
1	e.Venue Software License
32	SB+ Client Windows/GUI Emulation Software Licenses v5.3.3
	Operating System Products
32	SB Runtime Upgrade (Server Edition) Release v5.3.3
32	UniVerse version v10.0.11 DBMS Release Update
	Third-Party Application Software
1	SDC Protobase eXpress High-Speed SofTrans Module - PB eXpress Fee 1st Location/Merchant ID) - PB eXpress Set Up Fee
1	Additional SDC Protobase eXpress High Speed SofTrans License - PB eXpress Monthly Service Add'l Location/Merchant ID)
2	SDC Site Activation Fee (1 Site Activation required per Location/Merchant ID)
	SUBSCRIPTION SERVICES
	CA over IP Service
1	CA over IP Monthly Service
	PACMail
1	Service
	Service Program
32	Users, Premium Service Program (t.Res, t.Credit, t.Fund)

HARDWARE, SOFTWARE AND PROFESSIONAL SERVICES continued

Qty	Description
	PROFESSIONAL SERVICES
1	Hosted Services Setup Project Management RS/6000 Setup, Configuration and Testing Communication to LAN Setup and Testing Communication to CA processor Setup and Testing
	t.Res Conversion (TX2-t.Res)
2	Day(s), Project Management
1	Day(s), Software Installation and Conversion
1	Day(s), SB+ Client Installation (up to 24 PCs)
0	Day(s), Custom Program Rebuild (ESTIMATE) Day(s), Rebuild Custom Crystal Reports (ESTIMATE)
5	Day(s), Installation/Training - t.Res
	t.Fund Conversion (SG-t.Fund)
5	Day(s), SG to t.Fund Conversion
5	Day(s), Installation/Training t.Fund
5	Day(s), Priority Points Programming
	t.Credit Implementation and Training Services
1	Day(s), t.Credit Applications Training
1	CA over IP Installation
1	Professional Services Credit - Amendment No. 1 6/30/03
	e.Venue Services
1	e.Venue v6.8 Upgrade Standard Site Upgrade Software Configuration & Installation Project Management Set-up & Configuration for Monitoring Services
	PACMail
1	PACMail Implementation

Exhibit C

FEEs AND PAYMENT TERMS

FEEES	
TOTAL FEES (defined below)	\$510,000
PAYMENT TERMS	
<p>Year 1 <u>DUE on the Amendment Effective Date</u> Hosting of Server, High Speed Credit Authorization in PCI compliant environment, and PACMail: \$44,373 Maintenance of Server, Software in Hosting Facility (including upgrades): \$105,627 Software License Fee for t.Res, t.Fund, t.Credit, e.Venue and PACMail Software: \$50,000</p>	\$200,000
<p>Year 2 <u>DUE on the First (1st) anniversary of the Amendment Effective Date</u> Hosting of Server, High Speed Credit Authorization in PCI compliant environment, and PACMail: \$44,373 Maintenance of Server, Software in Hosting Facility (including upgrades): \$33,127 Hardware provided Print Server, Router, Cables, Network Adapter: Included</p>	\$77,500
<p>Year 3 <u>DUE on the Second (2nd) anniversary of the Amendment Effective Date</u> Hosting of Server, High Speed Credit Authorization in PCI compliant environment, and PACMail: \$44,373 Maintenance of Server and Software in Hosting Facility (including upgrades): \$33,127 Professional Services for upgrades and training: \$11,589</p>	\$77,500
<p>Year 4 <u>DUE on the Third (3rd) anniversary of the Amendment Effective Date</u> Hosting of Server, High Speed Credit Authorization in PCI compliant environment, and PACMail: \$44,373 Maintenance of Server and Software in Hosting Facility (including upgrades): \$33,127</p>	\$77,500
<p>Year 5 <u>DUE on the Fourth (4th) anniversary of the Amendment Effective Date</u> Hosting of Server, High Speed Credit Authorization in PCI compliant environment, and PACMail: \$44,373 Maintenance of Server and Software in Hosting Facility (including upgrades): \$33,127</p>	\$77,500